
(1964) 07 KL CK 0011
In the High Court Of Kerala
Case No : S.A. No. 250 of 1964

Subramonian

APPELLANT

Vs

Venkitadri Iyer

RESPONDENT

Date of Decision : 16-07-1964

Acts Referred:

Limitation Act, 1908 — Section 15(1)

Citation : (1964) KLJ 928

Hon'ble Judges : P.T. Raman Nayar, J

Bench : Single Bench

Advocate : K.P. Radhakrishna Menon, for the Appellant; T.L. Viswanatha Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Raman Nayar J:

1. With great respect I think that Itty v Mani 1963 KLT 442 was correctly decided and does not require reconsideration; and if that be so it is not disputed that this appeal must fail. In my opinion the result reached in that case can be reached on a plain reading of the statute--Section 15(1) of the Indian Limitation Act, 1908--without reference, on the one hand, to such considerations as the decree-holder's unfettered right to execute his decree in any manner he chooses or, of the hardships involved in the other possible views, or, on the other of the propriety of an extension of time when the decree-holder can keep his decree alive by making applications in an unprohibited mode (whether feasible or not), a device which, in any case, would be unavailing against the twelve years rule. The section does not speak of absolute or partial stays, and, it seems to me clear that, if there is a stay at all, it would be correct to say that execution of the decree has been stayed, no matter that the stay is restricted to one particular mode of execution and execution in other modes is open. (I am, of course, speaking of a single decree, not of a composite decree which really consists of several decrees where a stay of execution, partial or complete, of one or the

other of the several decrees would be no stay at all in respect of the remaining decrees). And coming to hardship, it is certainly hard, to take one example, that a partial stay restricted to the only feasible mode of execution should not avail even in respect of that mode. Such a case should stand on the same footing as an absolute stay and yet if *Ram Bharosay and Others Vs. Sohan Lal*, , *Raja Kirtyanand Singh and Others Vs. Raja Pirthiohand Lal Choudhri*, , AIR 1940 75 (Lahore) and *Virchand Kapurchand Vs. Marualappa*, were correctly decided would be of no avail at all. *Parameswar Nambudri v Seshan Patter* (AIR 1928 Mad 627) and *Lala Baijnath Prosad and Others Vs. Nursingdas Guzrati*, , which would restrict the operation of the section to cases where the stay was of execution in the manner sought, proceed more on what, as pointed out in *Itty v Mani* 1963 KLT 442 and as recognised by these decisions themselves, their Lordships thought--and, with great respect, I also think--the section ought to have said than on what it actually says. As stated in the Calcutta decision, the view taken therein involves reading into the section the words "the execution of which in the manner asked" for was stayed", in place of the words "the execution of which was stayed".

2. I might add that apart from the Travancore cases referred to therein, the decisions in *Ghulam Nasir Din v Hardoo Prasad* ILR 34 Alla 436 and *Bai Ujam v Bai Ruxmani* ILR 38 Bom 153 support the view taken in *Itty v Mani* 1963 KLT 442

3. I dismiss the appeal with costs. Leave refused.